

REMARKS/ARGUMENTS

Amendments were made to the Specification to include updated status information pertaining to related cases. No new matter has been added by such amendment to the Specification.

Claims 22-36 are pending in the present application. Claims 22-24, 28, 29, 33 and 34 have been amended herewith. Claims A1-B7 and D1-E4 were previously cancelled. Reconsideration of the claims is respectfully requested.

I. Specification

The Examiner noted that the cross referenced related application cited in the Specification needs to be updated with respect to the current status, and Applicants have amended the Specification accordingly.

II. Claim Objection

Claims 23, 24, 28, 29, 33 and 34 were objected to, with the Examiner noting that the abbreviations used in these claims need to be defined. Applicants have amended such claims accordingly.

III. 35 U.S.C. §101

Claims 22-26 stand rejected under 35 U.S.C. §101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

In rejecting Claims 22-26, the Examiner states that the Specification recites evidence where the computer-readable medium is defined as transmission-type media such as digital and analog communication links which at the present time the office feels does not fall into a category of invention. Applicants urge error, as follows.

Per the United States Patent and Trademark Office Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility published in the Official Gazette Notices on November 22, 2005, in Annex II:

A. Supreme Court

v. No Preemption Permitted

Even when a claim applies a mathematical formula, for example, as part of a seemingly patentable process, however, one must ensure that it does not in reality "seek[] patent protection for that formula in the abstract." Diehr, 450 U.S. at 191, 209 USPQ at 10. One may not patent a process that comprises every "substantial practical application"

of an abstract idea, because such a patent "in practical effect would be a patent on the [abstract idea] itself." Benson, 409 U.S. at 71-72, 175 USPQ at 676; cf. Diehr, 450 U.S. at 187, 209 USPQ at 8 (stressing that the patent applicants in that case did "not seek to pre-empt the use of [an] equation," but instead sought only to "foreclose from others the use of that equation in conjunction with all of the other steps in their claimed process"). Such limitations on process patents are important because without them, "a competent draftsman [could] evade the recognized limitations on the type of subject matter eligible for patent protection." Diehr, 450 U.S. at 192, 209 USPQ at 10; accord Flook, 437 U.S. at 590, 198 USPQ at 197. Thus, a claim that recites a computer that solely calculates a mathematical formula (see Benson), a computer disk that solely stores a mathematical formula, or **an electromagnetic carrier signal that carries solely a mathematical formula is not statutory** (emphasis added by Applicants).

vi. Claim Must Be Considered as a Whole

Only "when a claim containing [an abstract idea] implements or applies that [idea] in **a structure or process which, when considered as a whole, is performing a function which the patent laws were designed to protect,**" does "the claim satisf[y] the requirements of Sec. 101." Diehr, 450 U.S. at 192, 209 USPQ at 10 (emphasis added by Applicants).

Applicants respectfully submit that Claims 22-26 are not directed to an electromagnetic carrier signal *that carries solely a mathematical formula*, but instead is directed to a device driver, in a computer readable medium, suitable for communication with a plurality of different types of devices, and *provides specific functions* of (i) identification means for identifying all input/output ports relating to a basic device type common to the plurality of different types of devices; (ii) interrogation means using commands conforming to the standard and common to the plurality of different types of devices for polling a device within the plurality of different types of devices to obtain input/output ports used by the device in addition to the input/output ports identified by the identification means; and (iii) trapping means for trapping input/output ports identified by the identification means and the interrogation means, and therefore such claims are performing a function for which the patent laws were designed to protect, *Diamond v. Diehr*, 450 U.S. 175, 188-89, 209 USPQ 1, 9 (1981). Applicants have amended such claims to further emphasize such functionality when considering these claims as a whole. Therefore, the rejection of Claims 22-36 under 35 U.S.C. §101 has been overcome.

IV. 35 U.S.C. §102, Anticipation

Claims 22-36 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Bodin et al.* (U.S. 5,418,962). This rejection is respectfully traversed.

For a prior art reference to anticipate in terms of 35 U.S.C. §102, *every element* of the claimed invention must be *identically shown* in a single reference. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Applicants will now show that every element recited in Claim 1, and in particular the claimed interrogation means and trapping means, is not identically shown in a single reference.

Therefore, these claims have been erroneously rejected under 35 USC §102(b) as every element of the claimed invention recited in such claims is not identically shown in a single reference.

With respect to Claim 22, such claim recites the following features (in addition to others not specifically enumerated herewith):

- i) a device driver suitable for communication with a plurality of different types of devices;
- ii) each of the plurality of different types of devices conform to a common standard;
- iii) interrogation means using commands conforming to the standard and common to the plurality of different types of devices for polling a device within the plurality of different types of devices to obtain input/output ports used by the device in addition to the input/output ports identified by the identification means; and
- iv) trapping means for trapping input/output ports identified by the identification means and the interrogation means.

As can be seen, there are a plurality of different types of devices that can communicate with the device driver. In addition, each of these plurality of different types of devices conforms to a common standard. The interrogation means uses commands from this same standard (for which each of the plurality of different types of devices conform to) *for polling a device* within this same plurality of different types of devices in order to obtain input/output ports used by such device. The trapping means traps input/output ports identified by such interrogation means.

It is respectfully submitted that the cited reference does not teach the claimed interrogation means that uses commands conforming to the standard and common to the plurality of different types of devices *for polling a device within the plurality of different types of devices to obtain input/output ports used by the device*. In rejecting Claim 22, the Examiner cites *Bodin*'s teachings at col. 2, lines 41-68 and col. 4, line 56 – col. 5, line 10 as teaching the claimed interrogation means. As to the cited *Bodin* passage at col. 2, there *Bodin* states:

"The foregoing objects are achieved as is now described. A video display adapter control system is provided for utilization within a data processing system which includes a processor, data storage, a video display device and one of multiple selected video display adapter cards. **A text data file is generated, utilizing either a utility program, or manufacturer provided information, which specifies video adapter information for a specific video adapter card including: an identification of the particular video adapter; port addresses and indices; commands necessary to lock and unlock extended video registers; data which describes video mode resolutions and colors; and the necessary commands and data to enable selected video modes to be set and stored. A video display device driver is then provided which is capable of accessing and parsing the text data files** and which creates multiple command structures in response thereto. Each time a video state is required as a result of a session being initiated, terminated or transferred to background or foreground status, the appropriate command structure is utilized to determine and set a particular group of registers, store the status of the current registers and/or return the video adapter to a known stable state. The command structures are implemented utilizing an inverted linked list of commands which may be traversed in a direct or inverted manner to efficiently set or retrieve the state of the video adapter."

As can be seen, the cited passage teaches that a text data file (also see *Bodin* Figure 3, element 138) is parsed to obtain port addresses of a particular VGA adapter. This text file is not a part of *Bodin's* video hardware (which is shown at element 142 of *Bodin's* Figure 3). Rather, this text file is generated by executing a utility program *svga.exe* within the operating system (as described by *Bodin* at col. 4, lines 66-68). In contrast, Claim 22 describes *polling of the device itself* to obtain input/output ports that are used by the device driver.

As to the cited *Bodin* passage at col. 4 – col. 5, there *Bodin* states:

"Display driver 130 can then couple selected signals to video hardware 142 directly or via a character device driver such as OS2CHAR.DLL. Next, in accordance with an important feature of the present invention, an adaptable video display adapter device driver 134 is provided. In a manner which will be explained in greater detail herein, **this device driver may be utilized to access and parse a text file in order to create one or more command structures, which may be then utilized to support one of several display adapters. For example, a utility program "svga.exe" can be run within the OS/2 operating system to generate the data file "svgadata.pmi," as indicated at**

reference numeral 138. This file contains adapter specific information with regard to an identification of the manufacturer of a particular VGA adapter, the particular chip set to which this data pertains, port addresses and indices, commands to execute upon leaving a video mode, commands to lock and unlock extended registers and data for one or more mode resolutions and number of colors, in addition to those commands and data which are necessary to enable a specified video mode to be set or restored.”

As can be seen, the cited passage teaches that a text data file (also see *Bodin* Figure 3, element 138) is parsed to obtain port addresses of a particular VGA adapter. This text file is not a part of *Bodin*’s video hardware (which is shown at element 142 of *Bodin*’s Figure 3). Rather, this text file is generated by executing a utility program *svga.exe* *within the operating system* (as described by *Bodin* at col. 4, lines 66-68). In contrast, Claim 22 describes *polling of the device itself* to obtain input/output ports that are used by the device driver.

Still further, the trapping means recited in Claim 22 traps input/output ports that are identified *using two different sources for identifying/obtaining ports that it traps* – (1) identification means for identifying all input/output ports relating to a basic device type common to the plurality of different types of devices, and (2) interrogation means using commands conforming to the standard and common to the plurality of different types of devices for polling a device within the plurality of different types of devices *to obtain input/output ports used by the device in addition to the input/output ports identified by the identification means*. The cited reference does not describe any type of trapping means that traps ports identified using two different mechanisms (identification means and interrogation means). Rather, a single mechanism is used (parsing a text data file).

The features of Claim 22 advantageously provide an ability to extend the number of ports which are trapped using traditional techniques (where a standard set of generic ports are pre-defined), by allowing the device itself to be polled in order to obtain additional input/output ports that are used by the device in addition to the other, pre-defined input/output ports that may be used by the device. The teachings of the cited reference do not contemplate such port extension mechanism.

Therefore, as every element recited in Claim 22 is not identically shown in a single reference, it is urged that Claim 22 has been erroneously rejected under 35 USC §102(b), pursuant to *In re Bond, Id.*

Applicants traverse the rejection of Claims 23-26 for reasons given above with respect to Claim 22 (of which Claims 23-26 depend upon).

Applicants traverse the rejection of Claims 27-36 for similar reasons to those given above with respect to Claim 22.

Therefore, the rejection of Claims 22-36 under 35 U.S.C. §102(b) has been overcome.

V. Conclusion

It is respectfully urged that the subject application is patentable over the cited reference and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: February 8, 2007

Respectfully submitted,

/Wayne P. Bailey/

Wayne P. Bailey
Reg. No. 34,289
Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380
(972) 385-8777
Attorney for Applicants